

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                          |   |                                |
|--------------------------|---|--------------------------------|
| MARCELLUS RODNEY HORTON, | ) |                                |
|                          | ) |                                |
| Plaintiff,               | ) | Civil Action File No.          |
|                          | ) |                                |
| v.                       | ) |                                |
|                          | ) |                                |
| BANK OF AMERICA,         | ) | Removed from Gwinnett County   |
|                          | ) | Civil Action No. 23-C-00966-S3 |
| Defendant.               | ) |                                |
| _____                    | ) |                                |

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Bank of America, N.A.<sup>1</sup> (“BANA” or “Defendant”), by and through the undersigned counsel, hereby removes this action from the State Court of Gwinnett County, Georgia to the United States District Court for the Northern District of Georgia, Atlanta Division. Removal is based on diversity jurisdiction because complete diversity of citizenship exists between Plaintiff and Defendant and the amount in controversy exceeds \$75,000.00. In support of this Notice, BANA states as follows:

**I. Background**

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<sup>1</sup> Plaintiff has improperly named “Bank of America” as the Defendant. There is no such entity by that name. Bank of America, N.A. (“BANA”) is a national bank and appears here as the defendant on the presumption that Plaintiff intended to sue BANA.

1. This case was originally filed by Plaintiff in the State Court of Gwinnett County, Georgia on February 13, 2023. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders filed are attached as **Exhibit A**.

2. A copy of the Summons and Complaint were purportedly served on BANA on February 17, 2023.

**II. This Notice of Removal is Timely Filed in the Proper Venue.**

3. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of causes.

4. The removal of this action to this Court is timely under 28 U.S.C. § 1446(b) because it is filed within thirty days of receipt of the Complaint by BANA on February 17, 2023, and the time to remove has not yet expired. *See* 28 U.S.C. § 1446(b)(2)(B).

5. The United States District Court for the Northern District of Georgia is the proper venue to file this Notice of Removal under 28 U.S.C. § 1441(a) because it is the federal district court and division that embraces the place where the original action was filed and is pending.

**III. There is Complete Diversity Between the Parties.**

6. This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because complete diversity of citizenship exists between Plaintiff and Defendant,

and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs. *See* 28 U.S.C. § 1332(a) (2010).

7. Plaintiff is a resident of Georgia. [Ex. A, generally]; 28 U.S.C. § 1332(c). Since Plaintiff is domiciled in Georgia, he is a Georgia citizen. *Travaglio v. Am. Express Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013) (“Citizenship is equivalent to ‘domicile’ for purposes of diversity jurisdiction.”).

8. BANA is a national banking association organized under the laws of the United States with its main office in the state of North Carolina. Therefore, BANA is a citizen of North Carolina. *See* 28 U.S.C. § 1348; *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306-07 (2006) (“[A] national bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located.”)

9. Therefore, complete diversity of citizenship exists between Plaintiff and Defendant.

#### **IV. Amount in Controversy.**

10. Although BANA denies that Plaintiff is entitled to recover any amount and specifically denies that Plaintiff is entitled to the relief sought, the Complaint’s allegations place in controversy more than \$75,000.00, exclusive of interests and costs.

11. In the Complaint, Plaintiff alleges that he was damaged by not receiving a cashier's check from BANA, and he seeks general damages, including medical expenses and lost wages, and punitive damages of \$500,000.00 against BANA. (Ex. A.) Plaintiff's allegations, therefore, clearly show that the amount in controversy exceeds \$75,000.00. *See Holley Equip. Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir. 1987) (holding that "punitive damages must be considered" in determining the amount in controversy).

12. Thus, this Court has diversity jurisdiction in this action because (i) there is complete diversity of citizenship between the parties, and (ii) the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

## **V. Conclusion.**

13. Promptly after filing this Notice of Removal, BANA will provide written notice of removal to Plaintiff through counsel and file a copy of this Notice in the State Court of Gwinnett County, Georgia.

14. By filing this Notice of Removal, BANA does not waive, and specifically reserves, any and all objections as to service, personal jurisdiction, defenses, exception, rights, and motions.

WHEREFORE, BANA files this Notice of Removal and removes this civil action to the United States District Court for the Northern District of Georgia.

This 14th day of March, 2023.

/s/ Casondra R. Turner

Casondra R. Turner

Georgia Bar No. 418426

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*Attorney for Defendant Bank of America,  
N.A.*

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**CERTIFICATE OF SERVICE, FONT, AND MARGINS**

I hereby certify that on the undersigned date, I electronically filed the foregoing ***Notice of Removal*** with the Clerk of the Court using the CM/ECF System and served a true and correct copy of same on the following individuals via First-Class Mail, postage prepaid, addressed to:

Sam Laguda  
The Laguda Law Group, LLC  
2400 Herodian Way  
Suite 145  
Smyrna, GA 30080

I further certify that I prepared this document in 14-point Times New Roman font and complied with the margin and type requirements of this Court.

This 14th day of March, 2023.

/s/ Casondra R. Turner

Casondra R. Turner  
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N.A.*